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TO THE
HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE
AND
JUDICIARY

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Wednesday, January 25, 2012
2:00 p.m.

TESTIMONY ON H.B. 2020
RELATING TO MORTGAGE FORECLOSURES

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Iris Ikeda Catalani, commissioner of Financial Institutions ("Commissioner"). I am testifying on behalf of the Department of Commerce and Consumer Affairs ("Department") in support of Section 18 of H.B. 2020 relating to the repeal of Section 40, Act 48 of the Session Laws of 2011, and against that portion of H.B. 2020 which repeals nonjudicial foreclosures.

The Department supports Section 18 of the Bill which provides for the repeal of Section 40 of Act 48, Session Laws of Hawaii 2011. Section 40 imposed a moratorium

on all new nonjudicial actions under Part I of Chapter 667, Hawaii Revised Statutes.

The moratorium began on the effective date of Act 48 (2011) and is scheduled to end on July 1, 2012. Repealing the moratorium will help in rebuilding of the economy for Hawaii's banking and financial institutions and the people of Hawaii. The foreclosure process is expedited via nonjudicial foreclosures. It enables banks and financial institutions to return foreclosed properties to the marketplace with fewer delays. When foreclosed properties are sold, banks and financial institutions can remove the distressed properties from their books. Consumers will be able to rehabilitate their credit and move on to a housing situation that is more in line with their financial condition.

DFI believes that nonjudicial foreclosures serve a purpose for certain type of loans. These loans include investor loans, commercial loans, loans where the borrower is deceased, and loans where the property is abandoned. Financial institutions would benefit from using Part I nonjudicial foreclosure process and thus, DFI opposes that portion of H.B. 2020 which repeals nonjudicial foreclosures. Nonjudicial foreclosures are essential in facilitating foreclosures when commercial properties or investor owners are involved.

The purview of the Division is to regulate financial institutions so that they operate in a safe and sound manner. In order to have financial institutions operate in a safe and sound manner, financial institutions cannot keep forestalling the foreclosure

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situation in certain circumstances. I would contend that all financial institutions would prefer to work with a borrower to find a solution that would enable a borrower to continue to make payments on the mortgage and stay in his or her home rather than have the financial institution take back the mortgage as a bank owned property.

Probably the most important unintended consequence is that the repeal of Part I may negatively impact the safety and soundness of our financial institutions. The repeal may cause bad loans to stay on the books of financial institutions, causing the financial institutions to reserve additional capital. The more bad loans there are on the books, the more capital needs to be reserved, leaving less capital available to make additional loans. The greater the amount of reserves, the more the federal and state regulators may determine financial institutions are at financial risk. Banks already have tightened their underwriting and the type of residential loans they make to potential borrowers. To the extent that the banks want to show regulators they are financially sound, the more conservative they will be in their lending practices.

While the Division is sympathetic to the mortgage foreclosure situation, it is also concerned about maintaining the financial stability of our local banks and allowing banks to continue to make residential loans to potential homeowners. Those advocating for a repeal of Part I are well intended, however, the Division believes the unintended consequences should be considered.

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Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

Testimony for HB2020 on 1/25/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Friday, January 20, 2012 5:47 PM

To: CPCtestimony

Cc: coreen.williams@gmail.com

Categories: Yellow Category

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB2020

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: COREEN WILLIAMS

Organization: Individual

E-mail: coreen.williams@gmail.com

Submitted on: 1/20/2012

Comments:

Presentation of the Committees on Commerce and Consumer Protection and Judiciary
Wednesday, January 25, 2012 at 2:00 p.m.
Testimony on HB 2020 Relating to Mortgage Foreclosures

In Opposition

TO: The Honorable Chairs Robert N. Herkes and Gilbert S.C. Keith-Agaran
The Honorable Vice Chairs Ryan I. Yamane and Karl Rhoads
Members of the Committees

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2020. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill repeals part I of chapter 667, HRS, relating to foreclosure by action or foreclosure by power of sale.

It appears that this proposed bill would repeal both judicial foreclosures (Foreclosure by action) and nonjudicial foreclosures using Part I (Foreclosure by power of sale). Hopefully the intent is NOT to do away with the judicial foreclosure process and that it was an inadvertent error.

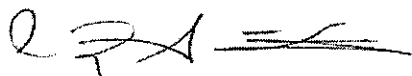
Obviously, repealing the judicial foreclosure process will have a catastrophic negative impact on our real estate market and mortgage lending. It would essentially convert all loans made into non-recourse loans and cause lenders to consider protective steps which would make it more difficult to obtain credit. This would further damage an already fragile Hawaii economy.

It was our understanding when Act 48 was enacted is meant to protect residential owner occupants. If this was the legislative intent, then hopefully the legislature *recognizes that there is a place and need for nonjudicial foreclosures (NJF) in certain situations.*

We believe there is a need for the nonjudicial foreclosure process for non-owner occupant residential mortgage loans (investor loans, vacant land, etc.). The nonjudicial foreclosure process should also be preserved for commercial mortgages or a situation where the borrower is in bankruptcy and the court has lifted the automatic stay. A streamlined NJF for non-owner occupant residential loans will reduce the backlog of pending foreclosures, allow these properties to be made available for sale and occupancy sooner, and ease the burden on the Judiciary by not having to hear these cases. Since investor loans are generally condominium units, a streamlined NJF process has the salutary effect of helping association of apartment owners, consistent with the exemption from Act 48 for such associations.

It is requested that instead of repealing Part I that this section be amended to allow for nonjudicial foreclosures for non-owner occupant residential mortgage loans. If proposed amendments to Part I cannot be completed this legislative session then the moratorium should extended for another year to allow time for the stakeholders to craft the appropriate amendments.

Thank you for the opportunity to provide our testimony.



Gary Y. Fujitani
Executive Director

Testimony for HB2020 on 1/25/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, January 23, 2012 6:43 PM

To: CPCtestimony

Cc: jade@steadfastpt.com

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB2020

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Jadine L Brown
Organization: Individual
E-mail: jade@steadfastpt.com
Submitted on: 1/23/2012

Comments:

Thank you for hearing the People and creating Act 48 to protect Hawaii homeowners from unfair practices by financial institutions and to ensure mandatory and transparent mediation/modification as well as ensuring due process during foreclosures. Mainland banks are attempting to bypass our law by filing judicial foreclosures. Despite copious evidence of fraud by the banks, it appears that the Hawaii judiciary is not yet compelled to rule in favor of Hawaiian homeowners, or even hear their arguments in court. We need stronger laws. Please pass HB2033, HB2018, HB2019, HB2020, and HB1875. Thank you again for hearing your People.

**LAW OFFICE OF GEORGE J. ZWEIBEL
45-3590A Mamane Street
Honoka'a, Hawaii 96727
(808) 775-1087**

**House Committee on Consumer Protection & Commerce
House Committee on Judiciary**

**Hearing: Wednesday, January 25, 2012, 2:00 p.m.
Conference Room 325, State Capitol, 415 South Beretania Street**

IN SUPPORT OF HB 2020

Chairs Herkes and Keith-Agaran, Vice Chairs, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

HB 2020 would repeal Part I of chapter 667 concerning judicial and nonjudicial foreclosure. I support repeal of Part I to the extent it concerns nonjudicial foreclosure. Presumably, the provisions relating to judicial foreclosure would appear elsewhere in chapter 667.

When the moratorium on using nonjudicial foreclosure under Part I expires, Hawaii would again have two different nonjudicial foreclosure laws. With the changes made by Act 48 and the current Task Force revisions, Part II will incorporate the best efforts of all to craft a fair and effective nonjudicial foreclosure law. There is no reason for Part I to continue to provide for an inferior alternative nonjudicial foreclosure process and those provisions should be repealed.

Thank you for your consideration of my testimony.



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Calvin Pang, Esq.
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.
Executive Director

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection and Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
House Committee on Judiciary

Hearing : Wednesday, January 25, 2012, 2:00 p.m.
State Capitol, Conference Room 325

In support of HB 2020 Relating to Mortgage Foreclosures

Chair and Members of the Committees:

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled, and other low and moderate income families who are consumers and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in the Consumer Unit at the Legal Aid Society of Hawai'i. I also give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. In addition, I provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying **in support** of HB 2020 as it would strengthen protections for borrowers in the State of Hawai'i.

HB 2020 would repeal Part I of chapter 667 concerning judicial and nonjudicial foreclosure. We support repeal of Part I to the extent it concerns nonjudicial foreclosure. Presumably, the provisions relating to judicial foreclosure would appear elsewhere in chapter 667.

When the moratorium on using nonjudicial foreclosure under Part I expires, Hawai'i would again have two different nonjudicial foreclosure laws. With the changes made by Act 48 and the current Mortgage Foreclosure Task Force revisions, Part II will incorporate the best

efforts of all to craft a fair and effective nonjudicial foreclosure law. There is no reason for Part I to continue to provide for an inferior alternative nonjudicial foreclosure process and those provisions should be repealed.

Conclusion:

For the above reasons, we respectfully request passage of HB 2020. We appreciate these committees' recognition of the need to protect consumers in the State of Hawai'i and support HB 2020's attempts at doing so. Thank you for the opportunity to testify.

Testimony for HB2020 on 1/25/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, January 24, 2012 5:34 PM

To: CPCtestimony

Cc: jwalden@lava.net

Attachments: HB 2020 - testimony to CPC~1.pdf (121 KB)

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB2020

Conference room: 325

Testifier position: Oppose

Testifier will be present: Yes

Submitted by: Marvin Dang

Organization: Hawaii Financial Services Association

E-mail: jwalden@lava.net

Submitted on: 1/24/2012

Comments:

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

January 25, 2012

Rep. Robert Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert Keith-Agaran, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2020 (Mortgage Foreclosures)**
Hearing Date/Time: Wednesday, January 25, 2012, 2:00 p.m..

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill.

The purpose of this Bill is to repeal Part I of chapter 667, HRS, relating to foreclosure by action or foreclosure by power of sale.

Part I of HRS Chapter 667 includes provisions for "foreclosure by action", i.e. judicial foreclosures (HRS Secs. 667-1 through 667-4), and "foreclosure by power of sale", i.e. non-judicial foreclosures under the 1874 law (HRS Secs. 667-5 through 667-15).

We recommend that:

1. The judicial foreclosure provisions in Part I should not be repealed. Even though the Circuit Courts have jurisdiction over mortgage foreclosure actions (see HRS Sec. 603-21.7), there doesn't appear to be any justification to repeal HRS Secs. 667-1 through 667-4.

2. The non-judicial foreclosure provisions in Part I should not be repealed. The non-judicial foreclosure process in Part I is currently an alternative to the non-judicial foreclosure process in Part II of HRS Chapter 667. Currently both processes can be used for foreclosures of owner-occupant properties and non-owner-occupant properties. However, Part II has more "bells and whistles" in it than Part I. Rather than being repealed, the Part I non-judicial foreclosure process could be limited to non-owner-occupant foreclosures. Foreclosures of non-occupant properties should not have to proceed under the non-judicial foreclosure process in Part II which arguably is more appropriate for owner-occupant non-judicial foreclosures. In this regard, this Bill needs to be amended to:

a. Limit the non-judicial foreclosure in Part I to non-judicial foreclosures of "non-owner-occupant properties" (regardless of whether or not the property is residential). The definition of "owner-occupant" is currently in HRS Sec. 667-21(b). That definition needs to be replicated in HRS Sec. 667-5. "Non-owner-occupant properties" would need to be defined as any property that is not the owner-occupant's primary residence for a continuous period of not less than 200 days immediately preceding the date on which the non-judicial foreclosure notice in HRS 667-5 is served on that person.

b. Delete HRS Sec. 667-5(a)(2) which requires that notice be given by a foreclosing lender to a borrower of (a) the right to elect to participate in the Mortgage Foreclosure Dispute Resolution ("MFDR") program under HRS 667-71, and (b) the right to convert a non-judicial foreclosure to a judicial foreclosure pursuant to Sec. 667-53. The deletion is needed because the MFDR program and the conversion right are limited to owner-occupants.

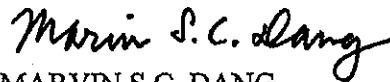
c. Delete HRS Sec. 667-5(e) relating to deficiency judgments. With the deletion, the lender will be able to pursue a deficiency judgment against non-owner-occupants.

d. Make the changes to HRS Secs. 667-5, 667-6, 667-10, 667-14, and 667-15 as recommended by the Mortgage Foreclosure Task Force in its Report to the 2012 legislature.

e. Delete the reference in HRS 667-53(a) to Part I non-judicial foreclosures consistent with the deletion in HRS Sec. 667-5(a)(2) above.

f. Delete the reference in HRS 667-71(a) to Part I non-judicial foreclosures consistent with the deletion in HRS Sec. 667-5(a)(2) above.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association